

Exhibit 6

1
2 UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 In re: :
5 : Master File No.
6 Global Brokerage, Inc. : 1:17-cv-00916-RA
7 F/k/a FXCM, Inc. :
8 Securities Litigation :
9 ----- :

10 CONFIDENTIAL

11 REMOTE VIDEO DEPOSITION OF:

12 DROR NIV

13 THURSDAY, FEBRUARY 11, 2021
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24 REPORTED BY:

25 SILVIA P. WAGE, CCR, CRR, RPR

<p style="text-align: right;">Page 42</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Was it in 2010?</p> <p>3 A. Yes.</p> <p>4 Q. Were you responsible for making the</p> <p>5 final decision to take FXCM public?</p> <p>6 A. The Board was and, you know, as</p> <p>7 Chairman of the Board, I was part of that.</p> <p>8 Q. Okay. And do you recall when FXCM's</p> <p>9 initial registration statement was filed with the</p> <p>10 SEC?</p> <p>11 A. I don't recall the exact date. I</p> <p>12 want to say probably around September of 2010,</p> <p>13 maybe August, around that time.</p> <p>14 Q. Okay. And did FXCM take any steps to</p> <p>15 prepare the company for going public before the</p> <p>16 registration statement was filed?</p> <p>17 A. Yes.</p> <p>18 Q. And in a broad sense, what were those</p> <p>19 steps?</p> <p>20 A. We made lots of, you know, lots of</p> <p>21 corporate governance changes, lots of, you know,</p> <p>22 different -- I don't recall now the -- this is</p> <p>23 over ten years ago, but, you know, I remember</p> <p>24 lots of changes.</p> <p>25 Q. Do you remember what say a couple of</p>	<p style="text-align: right;">Page 44</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 time.</p> <p>3 Q. Were you aware of any issues relating</p> <p>4 to Effex that needed to be addressed before FXCM</p> <p>5 went public?</p> <p>6 MR. DAHAN: Objection to form.</p> <p>7 A. We had a debate about whether to</p> <p>8 continue our no dealing desk model or to go back</p> <p>9 to the dealing desk model and we had an ongoing</p> <p>10 debate for the last few years of -- prior to</p> <p>11 going public. And we decided that -- you know,</p> <p>12 so if we were -- you know, the decision to</p> <p>13 continue and move all the business to the no</p> <p>14 dealing desk model, the rest of the business, if</p> <p>15 you will, no dealing desk model was made, then</p> <p>16 that decision is the decision that we basically</p> <p>17 made so we could not have a dealing desk inside.</p> <p>18 Q. And did that relate to Effex?</p> <p>19 A. That related, yes, to -- so two</p> <p>20 things, one, that John could not be an employee</p> <p>21 of FXCM and, two, that we were not going to buy</p> <p>22 Effex Capital.</p> <p>23 Q. And "John" is John Dittami?</p> <p>24 A. Yes.</p> <p>25 Q. And why was it your understanding</p>
<p style="text-align: right;">Page 43</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 the most significant changes that the company had</p> <p>3 to make for?</p> <p>4 MR. DAHAN: Objection to form.</p> <p>5 A. Again, I don't recall because this is</p> <p>6 11 years ago. But I know we had to get external</p> <p>7 board members that were not existing shareholders</p> <p>8 and, you know, independent Board members because</p> <p>9 it was an MIC listed company, so you had to have</p> <p>10 majority independent board members, a whole bunch</p> <p>11 of things around there.</p> <p>12 Q. Were there any changes that the</p> <p>13 company had to make to its operations before</p> <p>14 going public?</p> <p>15 A. I don't recall at the time.</p> <p>16 Q. Were there any particular compliance</p> <p>17 or legal concerns that the company had to address</p> <p>18 as it prepared to go public?</p> <p>19 A. I don't recall specifics.</p> <p>20 Q. Were you aware of any contractual</p> <p>21 issues that needed to be cleared up before FXCM</p> <p>22 went public?</p> <p>23 A. Again, I don't recall. I mean, there</p> <p>24 was -- I'm sure there was a lot. I do not recall</p> <p>25 every little detail, you know, what it was at the</p>	<p style="text-align: right;">Page 45</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 that John could not be an employee of FXCM at</p> <p>3 that time?</p> <p>4 MR. DAHAN: Objection to form.</p> <p>5 A. It's just a direction that we wanted</p> <p>6 to move in.</p> <p>7 Q. When you said, "could not be an</p> <p>8 employee," was it your understanding that there</p> <p>9 was some rule or law or issue that would prevent</p> <p>10 him from being an employee?</p> <p>11 A. It was just the optics of, you know,</p> <p>12 how it would look like.</p> <p>13 Q. And could you elaborate a little bit</p> <p>14 on what you mean by "how it would look like"?</p> <p>15 A. We wanted to have only external</p> <p>16 entities as market makers.</p> <p>17 Q. And at the time that FXCM went</p> <p>18 public, was Effex a liquidity provider for FXCM?</p> <p>19 A. Correct.</p> <p>20 Q. And you talked about the debate over</p> <p>21 whether to have a dealing desk versus no dealing</p> <p>22 desk and how that relates to Effex.</p> <p>23 Was -- what part of that debate was</p> <p>24 shaped by FXCM going public at that time?</p> <p>25 A. Well, it was shaped by -- you know,</p>

12 (Pages 42 - 45)

<p style="text-align: right;">Page 46</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 it didn't matter public or not. It was shaped by</p> <p>3 what was going to be best, you know, for the</p> <p>4 interest of the firm and the interest of its</p> <p>5 clients in terms of, you know, can we provide a</p> <p>6 good trading -- you know, a superior trading</p> <p>7 experience to other firms, which was our</p> <p>8 competitive advantage. And, you know, we had a</p> <p>9 debate internally ongoing even after going</p> <p>10 public, should we go back, and that's why we had</p> <p>11 debates whether to acquire Effex or not going</p> <p>12 forward, which is why there's so many documents</p> <p>13 about it, but in the end we decided not to buy</p> <p>14 Effex Capital.</p> <p>15 Q. Okay. And to sort of wrap this up, I</p> <p>16 guess, this...</p> <p>17 Was there anything about FXCM going</p> <p>18 public that played a factor in the debate that</p> <p>19 you were discussing earlier about dealing desk</p> <p>20 versus no dealing desk and Effex's involvement?</p> <p>21 A. The debate is really not specific to</p> <p>22 Effex. It's about specific to once you're a</p> <p>23 public company, your results must be more</p> <p>24 consistent and predictable. And the results, you</p> <p>25 know, just needs -- and you need to grow and</p>	<p style="text-align: right;">Page 48</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 drafting FXCM's annual and quarterly reports?</p> <p>3 A. Robert Lande, the CFO.</p> <p>4 Q. Thank you.</p> <p>5 Was there anyone else who was</p> <p>6 primarily involved in drafting.</p> <p>7 A. Robert Lande's staff.</p> <p>8 Q. Who at FXCM was involved or primarily</p> <p>9 involved in reviewing the annual and quarterly</p> <p>10 reports?</p> <p>11 MR. DAHAN: Objection to form.</p> <p>12 "Reviewing" when?</p> <p>13 A. Define "reviewing."</p> <p>14 Q. Did you review FXCM's annual and</p> <p>15 quarterly reports before they were filed?</p> <p>16 A. Of course.</p> <p>17 Q. And other than yourself, was there</p> <p>18 anyone else involved in reviewing FXCM's annual</p> <p>19 and quarterly reports before they were filed?</p> <p>20 A. I mean, we had Ernst & Young as an</p> <p>21 auditor and, you know, Counsel that -- you know,</p> <p>22 outside Counsel in a big firm in Manhattan, I</p> <p>23 forgot their name, that reviewed it. That's for</p> <p>24 sure. And the Board also reviewed it.</p> <p>25 Q. Okay. While you were reviewing the</p>
<p style="text-align: right;">Page 47</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 therefore, you know, we -- cause shareholders are</p> <p>3 buying it in order for a stock to go up.</p> <p>4 Obviously, as the largest shareholders in the</p> <p>5 company, we wanted the stock to go up because we</p> <p>6 would be the disproportionate beneficiaries, you</p> <p>7 know, of such a thing. And, you know, for that</p> <p>8 to happen, we needed to keep being competitive</p> <p>9 and needed to being on whatever provided the best</p> <p>10 customer experience and most competitive customer</p> <p>11 experience is what was going to, you know, carry</p> <p>12 us forward and that -- Effex is part of that</p> <p>13 conversation, right.</p> <p>14 Q. Okay. Once FXCM went public, did you</p> <p>15 have any involvement as CEO with FXCM's public</p> <p>16 filings with the SEC?</p> <p>17 A. Yes.</p> <p>18 Q. And while you were CEO, what was your</p> <p>19 role with respect to FXCM's annual or quarterly</p> <p>20 reports with the SEC, specifically?</p> <p>21 A. I would have to sign, right. And I</p> <p>22 had to present, you know, in the conference</p> <p>23 calls, the earnings conference call to investors</p> <p>24 the results.</p> <p>25 Q. Who at FXCM was chiefly involved in</p>	<p style="text-align: right;">Page 49</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 annual or quarterly reports, if you had any</p> <p>3 questions or concerns about the contents, did you</p> <p>4 have access to all the information you would need</p> <p>5 to satisfy your questions or concerns?</p> <p>6 A. Yes.</p> <p>7 Q. Did you have final signoff on the</p> <p>8 content of the annual and -- FXCM's annual and</p> <p>9 quarterly reports before they were filed?</p> <p>10 A. It was me and the Board, yes.</p> <p>11 Q. And would FXCM's annual or quarterly</p> <p>12 reports with the SEC be filed without your</p> <p>13 signoff as CEO?</p> <p>14 A. No.</p> <p>15 Q. And did that ever happen while you</p> <p>16 were CEO?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Okay. So I'm going to ask you to</p> <p>19 look back at Exhibit Share starting on, I</p> <p>20 believe, this should be Exhibit 3.</p> <p>21 (Deposition Exhibit 3, Form 10-K for</p> <p>22 the Fiscal year ended December 31, 2011, was</p> <p>23 marked for identification.)</p> <p>24 Q. And just let me know when you have</p> <p>25 that pulled up.</p>

<p style="text-align: right;">Page 62</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 (entry, stop and limit) with dealing desk</p> <p>3 execution, why can't you see them with dealing</p> <p>4 desk execution?" Is that a section that you</p> <p>5 would have reviewed or approved the content for?</p> <p>6 A. Yes.</p> <p>7 Q. And the answer to that question, not</p> <p>8 just the question itself, to be clear?</p> <p>9 A. You want me to answer that question?</p> <p>10 Q. No, no, I meant by -- would you have</p> <p>11 been involved in the review or approval of the</p> <p>12 answer to that question here --</p> <p>13 A. Yes, yes.</p> <p>14 Q. -- as opposed to the question itself?</p> <p>15 A. Yes.</p> <p>16 Q. I just wanted to clarify.</p> <p>17 A. Yeah, when I say, I approved a</p> <p>18 question, I approved the answer.</p> <p>19 Q. Yeah, thank you. I just wanted to</p> <p>20 make sure we had a clear record on that.</p> <p>21 MR. BAKER: Okay. I'm about to move</p> <p>22 into a different section. We've been going about</p> <p>23 an hour. Do we want to take a break now or push</p> <p>24 through? Either is fine with me.</p> <p>25 MR. DAHAN: We can take a short</p>	<p style="text-align: right;">Page 64</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Was there a particular venture or</p> <p>3 project that Mr. Dittami worked on while at FXCM?</p> <p>4 A. Mr. Dittami was hired, essentially,</p> <p>5 to help us figure out the problems we were having</p> <p>6 -- to analyze data and help us figure out the</p> <p>7 problems we were having with external liquidity</p> <p>8 providers, other market makers and help fix those</p> <p>9 issues. That was the reason he was...</p> <p>10 Q. Sorry, you're trailing off at the end</p> <p>11 there.</p> <p>12 A. So the original purpose was for him</p> <p>13 to do data analysis and to go figure out the --</p> <p>14 why we were having problems with some of our --</p> <p>15 many of our liquidity providers.</p> <p>16 Q. And other than the sort of analysis</p> <p>17 figuring out these problems, was there any other</p> <p>18 project that Mr. Dittami worked on while he was</p> <p>19 at FXCM?</p> <p>20 A. And so, once we could not filing out</p> <p>21 -- once we analyzed the problems and the issues</p> <p>22 the other people were having, we tried to get</p> <p>23 them to fix it and when they would not</p> <p>24 sufficiently fix them, we hired Mr. Dittami to</p> <p>25 potentially look into basically setting up a</p>
<p style="text-align: right;">Page 63</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 break. That's fine.</p> <p>3 MR. BAKER: Alright. You want to</p> <p>4 take five?</p> <p>5 MR. DAHAN: Sure. Thank you.</p> <p>6 THE VIDEOGRAPHER: Off the record at</p> <p>7 10:51.</p> <p>8 (Recess taken 10:51 to 11:00 a.m.)</p> <p>9 THE VIDEOGRAPHER: On the record</p> <p>10 11:00 a.m.</p> <p>11 Q. Welcome back, Mr. Niv.</p> <p>12 Earlier you mentioned John Dittami.</p> <p>13 But who is John Dittami?</p> <p>14 A. He is the CEO of Effex Capital.</p> <p>15 Q. And when did you first meet Mr.</p> <p>16 Dittami?</p> <p>17 A. I don't recall the exact date, but it</p> <p>18 was late 2000 sometime.</p> <p>19 Q. And did Mr. Dittami ever work for</p> <p>20 FXCM?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall when that was?</p> <p>23 A. It was -- I don't recall the exact</p> <p>24 dates, but it was for a few months before it went</p> <p>25 public. I don't recall exactly when.</p>	<p style="text-align: right;">Page 65</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 market making operation, you know, to fix it.</p> <p>3 Q. And that "operation" was within FXCM?</p> <p>4 A. Yeah. So, as part of the debate that</p> <p>5 we were ongoing that if we could not fix these</p> <p>6 problems, that we would have to, you know, we</p> <p>7 would have to -- we would have to end the no</p> <p>8 dealing desk execution model because we would</p> <p>9 have withdraw from it and then, you know, we</p> <p>10 would need to substitute it with something. And</p> <p>11 so Mr. Dittami would be -- would do that.</p> <p>12 Q. And the market making operation, did</p> <p>13 that have a name that it was referred to at FXCM?</p> <p>14 A. I don't -- I don't recall exactly,</p> <p>15 EES or one of those types of things.</p> <p>16 Q. "EES" you said?</p> <p>17 A. Yeah. I don't recall the exact name.</p> <p>18 I know when I see it.</p> <p>19 Q. Okay. And, to your knowledge, were</p> <p>20 there any other names used at FXCM to refer to</p> <p>21 Mr. Dittami's market making operation?</p> <p>22 MR. DAHAN: Objection to form.</p> <p>23 A. I don't recall the terminology. You</p> <p>24 know, I recall the substance, not the</p> <p>25 terminology.</p>

17 (Pages 62 - 65)

<p style="text-align: right;">Page 70</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Which side of that debate were you</p> <p>3 on?</p> <p>4 A. I was on the side of continuing</p> <p>5 external execution.</p> <p>6 Mr. Ahdout was on the withdraw from</p> <p>7 external execution.</p> <p>8 Q. Okay. And, I guess, to be clear, so</p> <p>9 while Mr. Dittami and his market making</p> <p>10 operations were still at FXCM, when you say they</p> <p>11 continue external execution, was -- did you</p> <p>12 consider Mr. Dittami's operation to be external</p> <p>13 execution at that time?</p> <p>14 A. Mr. Dittami was never operational,</p> <p>15 you know, inside of FXCM. He conducted studies,</p> <p>16 tests, you know, but we never went live.</p> <p>17 Q. And in those "tests," was that a test</p> <p>18 -- does that mean using his operation to provide</p> <p>19 liquidity for customers on FXCM's no dealing desk</p> <p>20 model?</p> <p>21 MR. DAHAN: Objection to form.</p> <p>22 A. By "test," I mean, we are basically,</p> <p>23 yes, we are using him as a liquidity provider,</p> <p>24 right, to see if he improves the customer</p> <p>25 experience.</p>	<p style="text-align: right;">Page 72</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Okay. When FXCM hired Mr. Dittami,</p> <p>3 did it enter into an employment agreement with</p> <p>4 him?</p> <p>5 A. Yes.</p> <p>6 Q. What was your role with respect to</p> <p>7 FXCM hiring Mr. Dittami?</p> <p>8 A. I approved it.</p> <p>9 Q. Were you involved at any other point</p> <p>10 in the hiring process?</p> <p>11 A. I interviewed him.</p> <p>12 Q. Were you involved in negotiating the</p> <p>13 terms of Mr. Dittami's employment agreement?</p> <p>14 A. Mr. Ahdout did all the terms.</p> <p>15 Q. Did Mr. Ahdout inform you or keep you</p> <p>16 aware of major terms that went into Mr. Dittami's</p> <p>17 employment agreement?</p> <p>18 A. Yes.</p> <p>19 Q. I'm going to introduce another</p> <p>20 exhibit. These things might take a little bit</p> <p>21 longer because they were not preloaded, so bear</p> <p>22 with me.</p> <p>23 (Deposition Exhibit 31, Employment</p> <p>24 Agreement 9/4/09 between Forex Capital Markets</p> <p>25 LLC and John Dittami GLBR_00110697 to</p>
<p style="text-align: right;">Page 71</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. And was there a particular segment of</p> <p>3 FXCM's trading volume that you intended for Mr.</p> <p>4 Dittami's operation to provide liquidity for?</p> <p>5 A. It was different segments. It was</p> <p>6 going to start in steps, you know -- you know,</p> <p>7 for different segments of the clients that were</p> <p>8 having more difficulties than others or we</p> <p>9 thought -- it's not even "difficulties"; where we</p> <p>10 thought that we could significantly improve it</p> <p>11 above what it is today and -- or at the time.</p> <p>12 The -- you know, do I remember the</p> <p>13 exact sequence of how that went, no. But it was</p> <p>14 not meant to be rolled out for everyone</p> <p>15 immediately all at once.</p> <p>16 Q. Do you remember what particular</p> <p>17 segments? Was retail one of those segments?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And at the time period still</p> <p>20 while Mr. Dittami was at FXCM, was the intent for</p> <p>21 his operation to provide liquidity to FXCM retail</p> <p>22 customers?</p> <p>23 A. If we were to withdraw from the</p> <p>24 external execution model, that would be the</p> <p>25 intent, yes.</p>	<p style="text-align: right;">Page 73</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 GLBR_00110712 marked Confidential, was marked for</p> <p>3 identification.)</p> <p>4 Q. So this will be -- you might have to</p> <p>5 refresh the folder in Exhibit Share. This will</p> <p>6 be Exhibit 31. And, first, just please let me</p> <p>7 know when you're able to see it.</p> <p>8 A. Let me see. Employment agreement, I</p> <p>9 see it.</p> <p>10 Q. Okay. And I'm mostly going to ask</p> <p>11 you some general questions, but feel free to</p> <p>12 review the entire document as you need.</p> <p>13 MR. BAKER: For the record,</p> <p>14 Exhibit 31 GLBR 110697.</p> <p>15 Q. Mr. Niv, just let me know when you're</p> <p>16 ready.</p> <p>17 A. Okay, let me see. You know, I don't</p> <p>18 want to take up time reviewing 31 pages, so if</p> <p>19 there are any pages you want to ask about.</p> <p>20 Q. Yeah. I'm just looking for you to</p> <p>21 familiarize yourself with it generally, but I can</p> <p>22 go ahead and ask you. You know, like I said</p> <p>23 before, you can always review the entire thing</p> <p>24 for context, if you need it.</p> <p>25 My first question, Mr. Niv, is, do</p>

<p style="text-align: right;">Page 74</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 you recognize this document?</p> <p>3 A. Yes.</p> <p>4 Q. And is this the Employment Agreement</p> <p>5 between John Dittami and Forex Capital Markets</p> <p>6 LLC?</p> <p>7 A. I believe so.</p> <p>8 Q. When did you first see this</p> <p>9 agreement?</p> <p>10 A. I don't remember the date.</p> <p>11 Q. Do you remember when you -- excuse</p> <p>12 me.</p> <p>13 Was it in 2009?</p> <p>14 A. I don't -- I don't review legal</p> <p>15 documents. So, you know, would I have even seen</p> <p>16 a document in 2009, no. Do I know the major, you</p> <p>17 know, compensation items, yes.</p> <p>18 Q. Okay. And so is it fair to say you</p> <p>19 first became aware of this agreement -- and I'm</p> <p>20 not asking for a particular date -- but around</p> <p>21 before or when it was signed?</p> <p>22 A. Of course, yes.</p> <p>23 Q. Okay. On the first page in the first</p> <p>24 "whereas" clause, the agreements reads, "The</p> <p>25 company and the executive desire to establish a</p>	<p style="text-align: right;">Page 76</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 were aware of?</p> <p>3 A. I am not aware.</p> <p>4 Q. And moving to the next page, I'd like</p> <p>5 to focus your attention on Sections 4 and 5.</p> <p>6 Were you aware in 2009 that Mr.</p> <p>7 Dittami's compensation was a base salary of</p> <p>8 \$250,000 plus 30 percent of the profits generated</p> <p>9 by his venture?</p> <p>10 A. Yes.</p> <p>11 Q. And so was it your understanding that</p> <p>12 at this time FXCM would split the trading profits</p> <p>13 generated by his venture with Mr. Dittami with</p> <p>14 FXCM keeping 70 percent, if and when it traded?</p> <p>15 MR. DAHAN: Objection to the</p> <p>16 reference of "his venture." Looking at the</p> <p>17 document it doesn't say its "his venture" but...</p> <p>18 Other than that objection, you can</p> <p>19 answer.</p> <p>20 A. The split was to be 70/30 had this</p> <p>21 venture got off the ground, yes.</p> <p>22 Q. Okay. And when FXCM hired Mr.</p> <p>23 Dittami, did you have an expectation as to the</p> <p>24 amount of profits that this market making</p> <p>25 operation would generate on an annual basis?</p>
<p style="text-align: right;">Page 75</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 new division of the company managing certain of</p> <p>3 the company's algorithmic endeavors, which shall</p> <p>4 include but not be limited to market making,</p> <p>5 proprietary trading, algorithmic execution</p> <p>6 services." And then it defines that as the</p> <p>7 "venture."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you understand that to be the</p> <p>11 same venture as we were just talking about for</p> <p>12 Mr. Dittami at FXCM?</p> <p>13 A. Yes.</p> <p>14 Q. And did you ever consider this</p> <p>15 venture to be a division of FXCM?</p> <p>16 A. Had it got off the ground, that's</p> <p>17 what it was meant to be.</p> <p>18 Q. Okay. And moving down to the Section</p> <p>19 No. 1 "Employment."</p> <p>20 Do you see the paragraph under that?</p> <p>21 A. Yes.</p> <p>22 Q. When Mr. Dittami was employed by</p> <p>23 FXCM, did he hold the title of Managing Director?</p> <p>24 A. Yes.</p> <p>25 Q. Did he hold any other titles that you</p>	<p style="text-align: right;">Page 77</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. We had no idea to do, that's why we</p> <p>3 were testing and we were experimenting phase by</p> <p>4 phase, client by client.</p> <p>5 Q. Did you have any expectation as to</p> <p>6 the order of magnitude of trading profits that it</p> <p>7 might accomplish when Mr. Dittami was first hired</p> <p>8 in terms of millions, tens of millions,</p> <p>9 thousands?</p> <p>10 A. Millions.</p> <p>11 Q. Okay. In going back to Page 1 under</p> <p>12 Section 2, do you see a reference to a \$3 million</p> <p>13 initial investment?</p> <p>14 A. Page 2.</p> <p>15 Q. Page 1, Section 2.</p> <p>16 A. Oh, yes, okay.</p> <p>17 Q. Did FXCM -- sorry?</p> <p>18 A. I see it, yes.</p> <p>19 Q. Okay. Did FXCM provide any of that</p> <p>20 initial investment to Mr. Dittami?</p> <p>21 MR. DAHAN: Objection. There's no</p> <p>22 reference here that it's to Mr. Dittami. Please</p> <p>23 come on stop. It says, "to the venture." Can</p> <p>24 you -- can you --</p> <p>25 MR. BAKER: Okay. I'll --</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 78</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 MR. DAHAN: Come on.</p> <p>3 MR. BAKER: I'll rephrase.</p> <p>4 MR. DAHAN: Thank you.</p> <p>5 Q. Did FXCM provide any of the initial</p> <p>6 investment referenced here to the venture</p> <p>7 referred to in this contract?</p> <p>8 A. I believe a little bit of it.</p> <p>9 Q. Do you recall, approximately, how</p> <p>10 much, was it a million, less, more?</p> <p>11 A. It was not a lot. I don't recall.</p> <p>12 Q. And do you recall if that amount of</p> <p>13 money was paid back?</p> <p>14 A. No. I mean, it -- that money was --</p> <p>15 again, we stopped the venture.</p> <p>16 Q. Okay. I'm going to show you the next</p> <p>17 exhibit.</p> <p>18 (Deposition Exhibit 32, e-mail string</p> <p>19 GLBR_00152843 & GLBR_00152844 marked</p> <p>20 Confidential, was marked for identification.)</p> <p>21 Q. This will be Exhibit 32. And please</p> <p>22 let me know when you can see it.</p> <p>23 A. I can see it.</p> <p>24 Q. Okay. Please take a minute to</p> <p>25 review.</p>	<p style="text-align: right;">Page 80</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Yes.</p> <p>3 Q. And Mr. Dittami writes, We went live</p> <p>4 today to FXCM Japan accounts only -- I'm sorry.</p> <p>5 "We went live today to FXCM Japan accounts only</p> <p>6 for 30 minutes"...</p> <p>7 A. It said, "two pairs."</p> <p>8 Q. Yes.</p> <p>9 A. Yes.</p> <p>10 Q. And this e-mail was March 19, 2010.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if Mr. Dittami was</p> <p>14 referring to his venture at -- to the venture at</p> <p>15 FXCM in this e-mail?</p> <p>16 A. Yes.</p> <p>17 Q. What is "FXCM Japan"?</p> <p>18 A. Subsidiary of FXCM Holdings.</p> <p>19 Q. A subsidiary similar in the way that</p> <p>20 FXCM US was a subsidiary, another regulated</p> <p>21 entity --</p> <p>22 A. Correct.</p> <p>23 Q. -- in a different --</p> <p>24 A. Right.</p> <p>25 Q. -- in the space in Japan?</p>
<p style="text-align: right;">Page 79</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 MR. BAKER: For the record,</p> <p>3 Exhibit 32 is GLBR 152843.</p> <p>4 Q. Mr. Niv, just let me know when you're</p> <p>5 ready. I'm just going to be focusing down on the</p> <p>6 e-mail in the second page.</p> <p>7 A. I'm ready.</p> <p>8 Q. Okay. So I'll note that you're not</p> <p>9 on the top e-mails in this chain, but you appear</p> <p>10 to be on the first two e-mails at the bottom of</p> <p>11 this chain here.</p> <p>12 And is this an e-mail chain between</p> <p>13 Mr. Dittami and Mr. Ahdout, yourself,</p> <p>14 Mr. Yusupov, Mr. Grossman and Mr. Sakhai, which</p> <p>15 then breaks off later to some of those</p> <p>16 participants?</p> <p>17 A. I'm sorry. Are you asking me if it</p> <p>18 is?</p> <p>19 Q. Yes.</p> <p>20 A. That's what it looks like.</p> <p>21 Q. Okay. And in the bottom e-mail from</p> <p>22 Mr. Dittami, the caption of the e-mail starts at</p> <p>23 the bottom of the Page 1 but the body is on</p> <p>24 Page 2.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 81</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. -- obviously in Japan, yes.</p> <p>3 Q. Thank you.</p> <p>4 MR. DAHAN: You have to wait for him</p> <p>5 to finish, so this way the Court Reporter can get</p> <p>6 both answers.</p> <p>7 A. Sorry.</p> <p>8 Q. Sorry. I think that was me too. So</p> <p>9 we'll both try to be better at that.</p> <p>10 Okay. So the accounts that are being</p> <p>11 referred to here, do you know if these are retail</p> <p>12 accounts?</p> <p>13 A. I believe so.</p> <p>14 Q. And is it your understanding that at</p> <p>15 this time, these accounts would have been trading</p> <p>16 in FXCM's no dealing desk model?</p> <p>17 A. I don't recall. Most of the accounts</p> <p>18 at the time were but not all of them.</p> <p>19 Q. And when Mr. Dittami says, "We went</p> <p>20 live today to FXCM Japan accounts," what do you</p> <p>21 understand that to mean?</p> <p>22 A. This was a test conducted for</p> <p>23 30 minutes on two pairs FXCM offered more for 40</p> <p>24 currency payors to clients. So this was a test</p> <p>25 to see how, you know, it performs in a live</p>

21 (Pages 78 - 81)

<p style="text-align: right;">Page 82</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 environment.</p> <p>3 Q. And this test were these actual</p> <p>4 trades conducted, though?</p> <p>5 A. Yes.</p> <p>6 Q. In the next paragraph of the e-mail</p> <p>7 about the middle of the second line, Mr. Dittami</p> <p>8 writes, "P&L per MM was far above expectations."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And in this context, does "P&L per</p> <p>12 MM" refer to the venture's trading profits per</p> <p>13 million units of volume?</p> <p>14 A. Yes.</p> <p>15 Q. And do you understand "P&L" to mean</p> <p>16 profit and loss?</p> <p>17 A. Correct.</p> <p>18 Q. And that's the same whether it's</p> <p>19 expressed PNL or P&L?</p> <p>20 A. Correct.</p> <p>21 Q. And "per MM," do you generally</p> <p>22 understand that to mean per million?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And that was going to speed</p> <p>25 things up for later today. But if there's ever a</p>	<p style="text-align: right;">Page 84</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 right.</p> <p>3 We were, you know, we went from</p> <p>4 six-person operation to one of the largest retail</p> <p>5 FX providers, in general, in the world, right,</p> <p>6 because we had a superior customer experience,</p> <p>7 you know, and we wanted to make sure that we grow</p> <p>8 that experience and got as far and above what we,</p> <p>9 you know, make most of our money on the venture</p> <p>10 was never going to be more than a rounding error</p> <p>11 in our financials. But it was to improve our</p> <p>12 execution and to ensure that we are competitive,</p> <p>13 which would, obviously, be very important to</p> <p>14 bottom line to ensure that, you know, our</p> <p>15 customer experience, you know, is superior to</p> <p>16 others.</p> <p>17 Q. Okay. I'm introducing the next</p> <p>18 exhibit.</p> <p>19 (Deposition Exhibit 33, e-mail string</p> <p>20 GLBR_00046387 to GLBR_00046388 marked</p> <p>21 Confidential, was marked for identification.)</p> <p>22 Q. Well, I guess, just before we do</p> <p>23 that, I want to clarify something in your last</p> <p>24 answer.</p> <p>25 I think you said that "the venture</p>
<p style="text-align: right;">Page 83</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 question or you're not sure about it, feel free</p> <p>3 to ask.</p> <p>4 Did you have any discussions with Mr.</p> <p>5 Dittami or others at FXCM about expectations for</p> <p>6 the venture's P&L?</p> <p>7 A. I mean, we, obviously, had</p> <p>8 discussions where, you know, he presented what he</p> <p>9 thought would happen. We had no -- you know, he</p> <p>10 was -- we did not know him very well, so he was</p> <p>11 new. So we wanted to conduct tests to see how it</p> <p>12 was going to go.</p> <p>13 Q. And so, when he says that, "P&L per</p> <p>14 million was far above expectations," was that --</p> <p>15 was it your understanding that those were his</p> <p>16 expectations or was that something shared, was</p> <p>17 there something, in particular, that he was</p> <p>18 referral to that you're aware of?</p> <p>19 A. His expectations.</p> <p>20 Q. Okay.</p> <p>21 A. Our expectation was the majority of</p> <p>22 the money we make was -- is from trading with our</p> <p>23 clients from the fees they pay us. And so our</p> <p>24 expectation was, if we improve, you know, the</p> <p>25 trading experience, we will get more trades,</p>	<p style="text-align: right;">Page 85</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 was never going to be more than a rounding error</p> <p>3 in your financials."</p> <p>4 A. Correct.</p> <p>5 Q. Before when we were looking at the</p> <p>6 employment contract, you were saying -- you said</p> <p>7 that the general expectation was that the</p> <p>8 operation would generate trading profit somewhere</p> <p>9 in the millions, roughly; am I restating all of</p> <p>10 that correctly?</p> <p>11 A. Correct.</p> <p>12 Q. So, that the trading profits in the</p> <p>13 millions, is that what you're saying would be</p> <p>14 just a "rounding error" in FXCM's financials?</p> <p>15 A. So revenues in 2010 were over</p> <p>16 \$300 million. So, you know, as we made</p> <p>17 \$10 million or \$20 million, that would be a</p> <p>18 rounding error.</p> <p>19 Q. Okay. That's fine. I just wanted to</p> <p>20 clarify the order of magnitude that we're talking</p> <p>21 about there.</p> <p>22 Okay. So, to the next exhibit, this</p> <p>23 is Exhibit 33. Please let me know when you can</p> <p>24 see it.</p> <p>25 A. I can see it.</p>

<p style="text-align: right;">Page 90</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 what? I'm sorry.</p> <p>3 A. Outside -- again, if it's testing, it</p> <p>4 was testing internally but, you know, once it</p> <p>5 goes live for real, we only went live as Effex</p> <p>6 Capital.</p> <p>7 Q. Okay. And were you aware in 2010</p> <p>8 that FXCM would allow Effex to win ties with</p> <p>9 other liquidity providers?</p> <p>10 A. So somebody has to win ties. And so</p> <p>11 what you usually do in a situation that, you</p> <p>12 know, if you look at the exchanges like NYSE or</p> <p>13 CME, you know, these kind of major trading</p> <p>14 venues, you know, the -- you first choose a price</p> <p>15 prove based on best price. But if two providers</p> <p>16 have best price, how do you decide who gets</p> <p>17 clicked on?</p> <p>18 Generally speaking, that tie breaker</p> <p>19 is decided by trading size, okay. So the market</p> <p>20 maker who offers the largest trading size wins</p> <p>21 that tie. We told Mr. Dittami that in order, you</p> <p>22 know, for him to win the tie, he would have to</p> <p>23 provide a larger trading size. So, therefore, it</p> <p>24 would be commensurate with the logic that is on</p> <p>25 every major, you know, trading exchange in the</p>	<p style="text-align: right;">Page 92</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 let me rephrase; how is it -- how available is</p> <p>3 it, which is a captured really by a rejection</p> <p>4 ratio, which is how often do you not honor that</p> <p>5 price and want to change it because the trade has</p> <p>6 gone against you.</p> <p>7 And Mr. Dittami had the lowest</p> <p>8 rejection rate by far of any liquidity provider</p> <p>9 and lower by, you know, like 90 percent lower.</p> <p>10 So, you know, one of the problems we had with</p> <p>11 other liquidity providers was they were rejecting</p> <p>12 trades way too frequently, which led to customers</p> <p>13 needing to resubmit the order and hit the next</p> <p>14 best available price creating slippage, which</p> <p>15 means they paid, essentially, extra spread and we</p> <p>16 wanted to minimize that, again, to keep our</p> <p>17 competitive advantage. The slippage is a major</p> <p>18 issue.</p> <p>19 As well as if a bank provided us with</p> <p>20 a price for a small amount, even if it was most</p> <p>21 competitive, we -- and we had hundreds of</p> <p>22 thousands of customers trading on these prices</p> <p>23 and there was more demand for that price than</p> <p>24 there was size available, then the first clients</p> <p>25 would get the price that they requested and then</p>
<p style="text-align: right;">Page 91</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 world that, you know, volume -- not volume --</p> <p>3 trading size is what the size -- the next most</p> <p>4 important factor after price in determining who</p> <p>5 wins. So, routinely, Mr. Dittami would offer</p> <p>6 trading sizes three to five times what the next</p> <p>7 LP would offer.</p> <p>8 Q. And when you said -- I think you</p> <p>9 said, we told Mr. Dittami that for him to win the</p> <p>10 tie, he would need to have a largest trading size</p> <p>11 win that tie.</p> <p>12 Was that true for other liquidity</p> <p>13 providers to win ties as well?</p> <p>14 A. Yeah, that's the logic of the</p> <p>15 software.</p> <p>16 Q. And were there other factors that</p> <p>17 went into the decision of who would win ties</p> <p>18 other than the largest size that was offered?</p> <p>19 A. Yes. So is there the -- there is</p> <p>20 basically -- obviously, there's most competitive</p> <p>21 price is the No. 1 factor.</p> <p>22 No. 2 factor is, you know, the issue</p> <p>23 of, you know, obviously, size and then there is</p> <p>24 the highest quality price in terms of how -- is</p> <p>25 it always available -- how is it -- excuse me,</p>	<p style="text-align: right;">Page 93</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 the next clients would, again, experience</p> <p>3 slippage where they would get the next best</p> <p>4 available price so we would be paying more and</p> <p>5 that's, again, a normal function in the market,</p> <p>6 which is why marketplaces, you know, offer</p> <p>7 advantage to size, so more customers get the size</p> <p>8 -- get the price that is displayed on the screen</p> <p>9 than not and minimize the slippage. That's why</p> <p>10 it's best practice.</p> <p>11 Q. And FXCM with respect to breaking</p> <p>12 ties, was the size offered always the first</p> <p>13 priority in terms of the deciding how to break</p> <p>14 the ties?</p> <p>15 A. Size and quality of price, yes,</p> <p>16 meaning, how low the rejection quality -- the</p> <p>17 rejections were. That would be the next two,</p> <p>18 yes.</p> <p>19 Q. So size was not always necessarily</p> <p>20 the determining factor?</p> <p>21 A. Yes, because if some bank decided</p> <p>22 that, you know, we had this issue with a number</p> <p>23 of people who would give us very competitive</p> <p>24 prices but then not honor them by a decent</p> <p>25 percentage of the time, when customers needed</p>

<p style="text-align: right;">Page 94</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 them the most and therefore would cause, you</p> <p>3 know, customers to actually pay, you know, too</p> <p>4 much, you know, and there was -- you know, it</p> <p>5 was, essentially, a misleading best price. It</p> <p>6 was not real. Without being a low rejection</p> <p>7 rate, the best price is not really the best</p> <p>8 price.</p> <p>9 Q. Okay.</p> <p>10 A. It's just a bait and switch.</p> <p>11 Q. And were you involved in determining</p> <p>12 -- or in setting the system for which liquidity</p> <p>13 providers would win ties?</p> <p>14 A. Yes. So, as you can see here, we at</p> <p>15 times gave advantages to Dresdner Bank, to</p> <p>16 Citibank, Goldman Sachs, to BNP, to other</p> <p>17 institutions. They just -- we experimented, you</p> <p>18 know, prior to Mr. Dittami with lots of</p> <p>19 different, you know, institutions in trying to</p> <p>20 improve the trading operation for -- for our</p> <p>21 clients. It's just we're not compelling enough</p> <p>22 of an improvement.</p> <p>23 Q. And once Effex started trading with</p> <p>24 FXCM, was there a time when Effex did not have</p> <p>25 the ability to win ties?</p>	<p style="text-align: right;">Page 96</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Okay.</p> <p>3 A. Because there were -- you know, at</p> <p>4 times, they were not quoting certain currency</p> <p>5 pairs or, you know, there were certain customers</p> <p>6 they would not -- yeah, there certain -- not</p> <p>7 customers; customer segments that a, you know,</p> <p>8 would not quote, so I don't recall.</p> <p>9 Q. Okay. But in that same time period</p> <p>10 from 2010 through 2014, is it fair to say that</p> <p>11 Effex won ties the majority of the time for the</p> <p>12 currency pairs in which they were trading with</p> <p>13 FXCM?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I'm going to show you the next</p> <p>16 document.</p> <p>17 (Deposition Exhibit 34, 4/12/10</p> <p>18 e-mail forward from John Dittami to Alexander</p> <p>19 Kochel GLBR_00002696 & GLBR_00002697 marked</p> <p>20 Confidential, was marked for identification.)</p> <p>21 Q. Okay. This is Exhibit 34. Mr. Niv,</p> <p>22 just let me know when you can see it.</p> <p>23 A. It's not -- hold on. Okay, I can see</p> <p>24 it.</p> <p>25 Q. Okay. And please take a minute to</p>
<p style="text-align: right;">Page 95</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. I don't recall. I don't recall exact</p> <p>3 specifics, if there was instances. I do recall</p> <p>4 the fact that we, you know, sent a scorecard to</p> <p>5 all our liquidity providers and, you know, if you</p> <p>6 rated too low, you were booted from the FXCM and</p> <p>7 we did boot some liquidity providers off of the</p> <p>8 mix or de-prioritized them more so. And we also,</p> <p>9 you know, obviously, prioritized those who did</p> <p>10 better.</p> <p>11 Effex was always by far and away the</p> <p>12 best performer on all the metrics and there was a</p> <p>13 whole slew of metrics. And, you know, that's</p> <p>14 why, you know, over the years from 2010 to 2015,</p> <p>15 '14, you know, our trading spreads, you know,</p> <p>16 declined by 90 percent, right. So the</p> <p>17 improvement to customers was pretty significant,</p> <p>18 almost 90 percent.</p> <p>19 Q. And in the time period from 2010 to</p> <p>20 let's say 2014 -- through 2014, is it fair to say</p> <p>21 that Effex would win ties majority of the time?</p> <p>22 A. Yes.</p> <p>23 Q. Was it 90 percent of the time or more</p> <p>24 or higher?</p> <p>25 A. I don't recall the specifics.</p>	<p style="text-align: right;">Page 97</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 review.</p> <p>3 MR. BAKER: As you do, I'll note for</p> <p>4 the record Exhibit 34 is GLBR 2696.</p> <p>5 Q. Mr. Niv, just let me know when you're</p> <p>6 ready.</p> <p>7 A. I am ready.</p> <p>8 Q. Okay. Mr. Niv, aside from the top</p> <p>9 e-mail in this chain, is this an e-mail from</p> <p>10 yourself to a number of individuals including</p> <p>11 Mr. Ahdout and Mr. Dittami?</p> <p>12 A. Yes.</p> <p>13 Q. And I'm going to point you down about</p> <p>14 halfway down the first page.</p> <p>15 A. This is mostly -- this is to</p> <p>16 employees to us. This is Patricia, Evan and Art.</p> <p>17 Those people you are referring to are CC'd.</p> <p>18 Q. Yes. Or it seems that they're in the</p> <p>19 "to" line of the e-mail here; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And do you recall if Mr.</p> <p>22 Dittami was still employed by FXCM at this time?</p> <p>23 A. I believe he officially left on the</p> <p>24 14th.</p> <p>25 Q. April 14th, 2010?</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So about halfway down your</p> <p>4 e-mail where you write, "Steps we need to take</p> <p>5 and must be priority," and then there is a number</p> <p>6 of numbered paragraphs, do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And in paragraph numbered two you</p> <p>9 write, "Once EES is reliably capturing a lot of</p> <p>10 flow, we turn off or severely handicap with extra</p> <p>11 markup some of the slower banks so we have EES</p> <p>12 and fast banks only winning most of the business.</p> <p>13 Dresdner and UBS are at the top of the list to</p> <p>14 get booted."</p> <p>15 When you say, "EES," does that</p> <p>16 refresh your recollection as to whether you're</p> <p>17 referring to the venture at FXCM?</p> <p>18 A. It's a technical configuration. So</p> <p>19 it refers interchangeably to the, you know, to</p> <p>20 the venture but that, you know, we'd refer to</p> <p>21 Effex as EES too for a long time.</p> <p>22 So it's really a technical connection</p> <p>23 in combination in the system that we sort of</p> <p>24 designated for them on the -- you know, there's</p> <p>25 no meaning for the actual word.</p>	<p style="text-align: right;">Page 100</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. This was -- once we get comfortable</p> <p>3 that we, you know, are seeing that we can live</p> <p>4 without those institutions, then we will be</p> <p>5 turning off some of them and handicapping others.</p> <p>6 Because, again, as I explain in the last</p> <p>7 question, it was the -- or second to last -- it</p> <p>8 was if you are providing us a price that is the</p> <p>9 best price but with a 20 percent rejection rate</p> <p>10 -- and that's a big switch -- it is not the best</p> <p>11 price, because 20 percent of the time -- and it</p> <p>12 usually would come at 20 percent of the time when</p> <p>13 the market is really moving and the customer</p> <p>14 needs you the most, you're not really there. So</p> <p>15 that price is, essentially, fake a percentage of</p> <p>16 the time. So how reliable is that price matters.</p> <p>17 And so speed in terms of the slow</p> <p>18 banks, how fast they can determine that the trade</p> <p>19 has been executed, right, and how fast and how</p> <p>20 much they wait to see whether they want to do the</p> <p>21 trade or not matters a lot. And that's, you</p> <p>22 know, because if this bank does not want it, we</p> <p>23 need to pass it to the next best available. So</p> <p>24 how fast we get -- they are evaluating and how</p> <p>25 fast they respond to us is also a criteria, which</p>
<p style="text-align: right;">Page 99</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Okay. In this section of your</p> <p>3 e-mail, were you talking about FXCM's retail</p> <p>4 trading?</p> <p>5 A. Correct. As you can see from</p> <p>6 Paragraph 2, there's the problems I was talking</p> <p>7 about -- Point 2. Problems I was talking about</p> <p>8 is that the slow banks basically would -- you</p> <p>9 know, the metrics, basically, were terrible and</p> <p>10 were costing our clients, you know, a lot of</p> <p>11 money.</p> <p>12 So we wanted -- we had a lot of</p> <p>13 liquidity providers, over 15 at the time. And we</p> <p>14 wanted to, you know, the ones that were causing</p> <p>15 problems for clients but could not do that</p> <p>16 without sacrificing spread competition unless we</p> <p>17 had Effex up and running tightening up spreads,</p> <p>18 you know, and making sure that our competition is</p> <p>19 still significant.</p> <p>20 Q. Okay. And in this Paragraph 2 of</p> <p>21 this section, were you instructing the people on</p> <p>22 your e-mail to stop trades from going to certain</p> <p>23 banks or to severely handicap the ability of</p> <p>24 those banks to win trades by adding higher</p> <p>25 markups to their prices?</p>	<p style="text-align: right;">Page 101</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 is why, you know, we basically do not -- because</p> <p>3 of all of these factors -- and there's others</p> <p>4 that, you know, impact -- it's not a linear</p> <p>5 situation, you know, of what is the best price.</p> <p>6 And that is something that, you know, we had to</p> <p>7 take into account and it was an ongoing process,</p> <p>8 you know, to improve this.</p> <p>9 But that's what Effex did so well,</p> <p>10 right. So Effex had the lowest rejection rate,</p> <p>11 the fastest turn around time, the fastest</p> <p>12 response rate and, you know, you can see it in</p> <p>13 the performance. And not only did it tighten</p> <p>14 spreads, but they, you know, eliminated enormous</p> <p>15 amount of slippage, you know, boosted our price</p> <p>16 improvement, you know, to our customers where</p> <p>17 customers were getting a better price than they</p> <p>18 requested. So our price improvement percentages</p> <p>19 tripled because of Effex, you know, all of those</p> <p>20 things.</p> <p>21 Q. Oh, thank you.</p> <p>22 And when you mention, "extra markups"</p> <p>23 here, did FXCM apply -- the "markups" that you're</p> <p>24 referring to, is that the banks or liquidity</p> <p>25 providers would offer a bid or bid or offer price</p>

<p style="text-align: right;">Page 102</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 to FXCM, FXCM would then add a markup to that</p> <p>3 price before showing it to the customer; is that</p> <p>4 an accurate description.</p> <p>5 A. So our -- the entire business model</p> <p>6 of how we made money is our banks would offer us</p> <p>7 price. We would take the best bid offer of the</p> <p>8 mix of those prices and add up a markup. So all</p> <p>9 trades had a markup. That was, essentially, our</p> <p>10 commission, okay, how we made most of our money</p> <p>11 as a broker. That was the hundreds of millions</p> <p>12 of dollars of revenue that we are talking about</p> <p>13 between that and interest.</p> <p>14 And then because of what I explained</p> <p>15 previously, because of certain people would --</p> <p>16 essentially, their prices be less reliable,</p> <p>17 because their metrics were not very good, because</p> <p>18 they would reject a lot, you know, they would</p> <p>19 take too long, you know, and that would cause us</p> <p>20 -- let's say our metrics to decline with our</p> <p>21 clients, we penalized them by putting extra</p> <p>22 markups.</p> <p>23 Q. Okay. So FXCM would sometimes apply</p> <p>24 different markups to the prices provided by</p> <p>25 different liquidity providers?</p>	<p style="text-align: right;">Page 104</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 happened?</p> <p>3 A. I do not recall.</p> <p>4 Q. Do you remember if that was prior to</p> <p>5 2015 or after?</p> <p>6 A. I believe prior to 2015.</p> <p>7 Q. Okay. And after 2010?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So was it is your</p> <p>10 understanding that Effex would not have won as</p> <p>11 much volume if you did not turn on or apply the</p> <p>12 extra markups to the slower banks?</p> <p>13 MR. DAHAN: Objection to form.</p> <p>14 A. Essentially, they would win the same</p> <p>15 volume. Unfortunately, they would be hit second.</p> <p>16 So what would happen is that, you know, a</p> <p>17 customer would click on a slow bank. The bank</p> <p>18 would reject that customer. That order would</p> <p>19 come back to us. We would have to route it,</p> <p>20 again, to the next best available bank or Effex</p> <p>21 or other market maker.</p> <p>22 And, unfortunately, time has now</p> <p>23 elapsed. As the customer sent the order, the</p> <p>24 bank took a while looking at it, then said, no.</p> <p>25 We sent the order back and now we have to send it</p>
<p style="text-align: right;">Page 103</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Correct. Depending on the quality of</p> <p>3 the price that they sent, be it size, be it,</p> <p>4 again, rejection rate, speed of response, speed</p> <p>5 of evaluation, you know, which is like what</p> <p>6 people refer to as hold time, all of that.</p> <p>7 Q. Okay. And just to, I guess, clarify</p> <p>8 one point in that workflow that you were</p> <p>9 describing with the markups.</p> <p>10 So would FXCM apply the markups after</p> <p>11 the best price was determined or would it apply</p> <p>12 markups to different banks and then taking the, I</p> <p>13 guess, combined price plus markup determine where</p> <p>14 the best price was?</p> <p>15 A. No. We would add -- the system would</p> <p>16 change configurations on the system over years.</p> <p>17 In the beginning, we would add different markups</p> <p>18 to different banks and then we -- then we would</p> <p>19 aggregate the best bid offer of that, okay.</p> <p>20 Over time we changed it to do it the</p> <p>21 first way I described and we just -- we did not</p> <p>22 differential markups. We would -- bootied, you</p> <p>23 know, providers that did not meet the minimum</p> <p>24 standards.</p> <p>25 Q. Do you recall around when that change</p>	<p style="text-align: right;">Page 105</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 to a different one, you know, this is, obviously,</p> <p>3 all in milliseconds, but this is robbing, you</p> <p>4 know, execution time from the customer, which</p> <p>5 then means that, most likely, the customer is</p> <p>6 likely to receive a worst price, you know, from</p> <p>7 the next best available and not the price that he</p> <p>8 initially requested.</p> <p>9 So we necessarily have the one -- a</p> <p>10 less flow, no, but they -- the customer</p> <p>11 experience would be significantly impacted</p> <p>12 because they would be -- they would have to wait</p> <p>13 longer until they got executed and they would get</p> <p>14 executed at worse prices.</p> <p>15 That was the whole theory behind why</p> <p>16 we would penalize on banks, you know, that were</p> <p>17 too slow or had unreliable statistics in terms of</p> <p>18 rejection rate.</p> <p>19 Q. Okay. So I'm about to move onto a</p> <p>20 new document, I guess, a new section as well.</p> <p>21 We've been going about an hour. I don't know if</p> <p>22 we want to maybe take a five-minute break now or</p> <p>23 we can push through. We can take a lunch break.</p> <p>24 I'm open to whatever, Mr. Niv. I don't know if</p> <p>25 you have a preference.</p>

<p style="text-align: right;">Page 106</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 THE WITNESS: Israel, you tell me</p> <p>3 what you want to do.</p> <p>4 MR. DAHAN: It's your call. We can</p> <p>5 go another hour and take lunch. We can take</p> <p>6 lunch now and go straight. It's however you want</p> <p>7 to divide your day, Drew.</p> <p>8 A. Yeah, let's do lunch now and then we</p> <p>9 can go no, problem.</p> <p>10 Q. Alright.</p> <p>11 THE VIDEOGRAPHER: We're off the</p> <p>12 record 12:02.</p> <p>13 (Lunch recess taken 12:02 to</p> <p>14 p.m.)</p> <p>15 THE VIDEOGRAPHER: We are on the</p> <p>16 record 12:32.</p> <p>17 Q. Welcome back, Mr. Niv.</p> <p>18 (Deposition Exhibit 35, 4/4/10 letter</p> <p>19 to John Dittami and William Ahdout from William</p> <p>20 Ahdout E Capital 000049, was marked for</p> <p>21 identification.)</p> <p>22 Q. I've introduced the next exhibit, if</p> <p>23 you want to take a look and let me know. This is</p> <p>24 Exhibit 35. Let me know when you can see it.</p> <p>25 A. I can see it.</p>	<p style="text-align: right;">Page 108</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. I don't.</p> <p>3 Q. Okay. Do you recall if it was around</p> <p>4 the time that Mr. Dittami left FXCM?</p> <p>5 A. No. I'm pretty sure I saw this -- I</p> <p>6 don't -- honestly, I don't recall when I saw it.</p> <p>7 I know, obviously, that, you know -- because I</p> <p>8 ultimately, you know, as a Board, you know, made</p> <p>9 the decision not to do this. So, you know, I</p> <p>10 knew this was happening. So, I mean, I don't</p> <p>11 need a letter to do that.</p> <p>12 Q. Okay. And in this letter. Mr.</p> <p>13 Dittami writes in the last paragraph, "It is the</p> <p>14 understanding of both parties to enter into a</p> <p>15 license agreement on economic terms similar to</p> <p>16 the employment agreement."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And this letter is also signed by</p> <p>20 Mr. Ahdout on behalf of FXCM US?</p> <p>21 A. Yes.</p> <p>22 Q. Were you aware of the understanding</p> <p>23 that Mr. Dittami references in this letter?</p> <p>24 A. Yes.</p> <p>25 Q. And did you have any conversations</p>
<p style="text-align: right;">Page 107</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Okay. And please take a minute to</p> <p>3 review.</p> <p>4 MR. BAKER: For the record,</p> <p>5 Exhibit 35 is Bates stamped E Capital 49.</p> <p>6 Q. Mr. Niv, just let me know when you're</p> <p>7 ready.</p> <p>8 A. I'm ready.</p> <p>9 Q. Do you recognize this document?</p> <p>10 A. Yes.</p> <p>11 Q. And is this a letter from Mr. Dittami</p> <p>12 resigning from FXCM on April 14, 2010?</p> <p>13 A. Yes.</p> <p>14 Q. When did you first see this document?</p> <p>15 A. I don't remember. But, obviously, we</p> <p>16 spoke about this even before that. So we knew</p> <p>17 that this was a foregone conclusion. A decision</p> <p>18 was involved.</p> <p>19 Q. Okay. And so you were aware at or</p> <p>20 around this time that Mr. Dittami and FXCM had</p> <p>21 terminated Mr. Dittami's employment contract?</p> <p>22 A. Correct.</p> <p>23 Q. And just, I guess, specifically, with</p> <p>24 regard to this document, this letter, do you</p> <p>25 recall when you first saw this document?</p>	<p style="text-align: right;">Page 109</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 with Mr. Dittami about that understanding?</p> <p>3 A. Yes. So, you know, Mr. Dittami was</p> <p>4 going to open his own firm and is going to be,</p> <p>5 you know, taking on FXCM plus other clients.</p> <p>6 And, eventually, he had over 30 clients, I</p> <p>7 believe. Obviously, one of the big ones was</p> <p>8 FXCM.</p> <p>9 But the payment for flow that we</p> <p>10 would get, right, that's -- kind of the initial</p> <p>11 thought was that it would mimic this employment</p> <p>12 agreement. It's not how we ended it. It's not</p> <p>13 what we decided at the end, but that was the</p> <p>14 initial thing.</p> <p>15 Q. And when you say the payment for flow</p> <p>16 would "mimic" the employment agreement, what part</p> <p>17 of the employment agreement, in particular?</p> <p>18 A. The P&L split of FXCM's trading of</p> <p>19 FXCM's flow, right, but not, obviously, of flow</p> <p>20 outside of FXCM.</p> <p>21 Q. Understood.</p> <p>22 So that's the 70/30 split that we</p> <p>23 looked at earlier?</p> <p>24 A. Yes.</p> <p>25 Q. And did you have any conversations</p>

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<p style="text-align: right;">Page 110</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 with Mr. Dittami about maintaining that 70/30</p> <p>3 split around this time in 2010?</p> <p>4 A. We were negotiating throughout the</p> <p>5 spring and summer over ways to skin that cat.</p> <p>6 But because he was going to take over -- he was</p> <p>7 going to take on other customers and do</p> <p>8 proprietary trading things that were not related</p> <p>9 to FXCM, you know, it made all of this -- and,</p> <p>10 obviously, in trading you can't really sequester</p> <p>11 one sort of flow from the other because at one of</p> <p>12 these firms -- at these market making firms, they</p> <p>13 try to, obviously, scale up so, you know, they</p> <p>14 can buy from one client and sell to the next and</p> <p>15 cross that. That's how they make their money.</p> <p>16 So it's really -- you can't really</p> <p>17 put a percentage of FX -- of flow because the P&L</p> <p>18 is produced by the interaction of our flow with</p> <p>19 other people's flow too. So, at the end, it was</p> <p>20 not practical to do percentages and we did fixed</p> <p>21 amounts.</p> <p>22 Q. Okay. And so, that I understand you</p> <p>23 right, so you're saying it wasn't practical to</p> <p>24 determine say a 70/30 split of only the trading</p> <p>25 that came from FXCM as opposed from other</p>	<p style="text-align: right;">Page 112</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. I can see it.</p> <p>3 Q. Okay. And please take a minute to</p> <p>4 review. I'm, generally, just going to be asking</p> <p>5 you some general questions about this. And --</p> <p>6 but take whatever time you need.</p> <p>7 MR. BAKER: For the record,</p> <p>8 Exhibit 36 is Bate stamped E Capital 4.</p> <p>9 Q. Mr. Niv, just let me know when you're</p> <p>10 ready.</p> <p>11 A. I am ready.</p> <p>12 Q. Okay. Do you recognize this</p> <p>13 document?</p> <p>14 A. Yes.</p> <p>15 Q. And is this a Services Agreement</p> <p>16 between Effex and FXCM US?</p> <p>17 A. Yes.</p> <p>18 Q. And that's dated the effective date</p> <p>19 of March 1st, 2010?</p> <p>20 A. Correct.</p> <p>21 Q. Do you recall when you first saw this</p> <p>22 agreement?</p> <p>23 A. No. But I approved this agreement,</p> <p>24 so I definitely saw it.</p> <p>25 Q. And was that -- so around -- before</p>
<p style="text-align: right;">Page 111</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 entities; is that what you're saying?</p> <p>3 A. Correct, correct. So, basically,</p> <p>4 he'll be making money from other places but that</p> <p>5 money would -- I mean, he would make -- you know,</p> <p>6 depending market conditions and all the other</p> <p>7 issues, he would take more or less depending on</p> <p>8 how much scale he had and that's related to</p> <p>9 another factors outside of FXCM.</p> <p>10 And so, you know, we decided that a</p> <p>11 set payment is better and more market standard in</p> <p>12 accordance we were looking at what do all the</p> <p>13 major -- so payment for order flow is a standard</p> <p>14 practice for stock brokers. We were like what</p> <p>15 is, you know, standard practice that all the big</p> <p>16 firms on Wall Street were doing and so this was</p> <p>17 -- the fixed fee was more standard practice, so</p> <p>18 we went with the fixed fee.</p> <p>19 Q. Okay. I'm showing you the next</p> <p>20 document.</p> <p>21 (Deposition Exhibit 36, Service</p> <p>22 Agreement E Capital-000004 to E Capital-000011,</p> <p>23 was marked for identification.)</p> <p>24 Q. I believe Exhibit 36 and please let</p> <p>25 me know when you can see it.</p>	<p style="text-align: right;">Page 113</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 or around when it was signed is when you believe</p> <p>3 that you first saw it?</p> <p>4 A. I believe so.</p> <p>5 Q. And is this something that you would</p> <p>6 have seen a draft of before it was signed?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember seeing drafts or</p> <p>9 reviewing drafts of this document?</p> <p>10 A. I don't recall. It's too long -- too</p> <p>11 long ago.</p> <p>12 Q. Did you exchange e-mails about this</p> <p>13 agreement before it was signed?</p> <p>14 A. I don't recall specifics. It's just</p> <p>15 too long ago. I'm sure it makes sense I would.</p> <p>16 I don't recall.</p> <p>17 Q. Have you ever referred to this</p> <p>18 agreement as anything other than the Services</p> <p>19 Agreement?</p> <p>20 A. I don't recall that either.</p> <p>21 Q. Do you remember hearing anyone else</p> <p>22 at FXCM referring to this agreement as other than</p> <p>23 a Services Agreement?</p> <p>24 A. No, I don't recall.</p> <p>25 Q. And so were you aware that FXCM had</p>

<p style="text-align: right;">Page 118</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Please take a minute to review</p> <p>4 this document.</p> <p>5 MR. BAKER: For the record,</p> <p>6 Exhibit 37 is E Capital 50, 5-0.</p> <p>7 Q. Mr. Niv, let me know when you've had</p> <p>8 a minute to review.</p> <p>9 A. I know this agreement, you know.</p> <p>10 Yeah, I reviewed, yeah.</p> <p>11 Q. So do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. And is this an Option Agreement</p> <p>14 between Mr. Dittami and FXCM US dated April 14,</p> <p>15 2010?</p> <p>16 A. This is -- this is an agreement that</p> <p>17 Mr. Ahdout and Mr. Dittami signed, correct.</p> <p>18 Q. Okay. And the agreement is dated the</p> <p>19 same day as Mr. Dittami left FXCM?</p> <p>20 A. Yeah.</p> <p>21 Q. When did you first see this document?</p> <p>22 A. I don't recall the date.</p> <p>23 Q. Was it sometime around when it was</p> <p>24 signed?</p> <p>25 A. I would imagine so, yeah.</p>	<p style="text-align: right;">Page 120</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 at people, you know, that's why we have lawyers</p> <p>3 internally. That's their job.</p> <p>4 Q. Were you aware of anything in writing</p> <p>5 that rendered this agreement "null and void"?</p> <p>6 A. No, I don't do the details.</p> <p>7 Q. Looking at Paragraph 1 of this</p> <p>8 document about halfway down the first page, is it</p> <p>9 fair to say --</p> <p>10 A. Yes.</p> <p>11 Q. Sorry. Is it fair to say that under</p> <p>12 this agreement, FXCM had the right to purchase a</p> <p>13 70 percent interest in Effex for \$1?</p> <p>14 A. Correct.</p> <p>15 Q. Under the second whereas clause, it's</p> <p>16 the third paragraph from the top, it says, "FXCM</p> <p>17 has loaned to Effex the sum of \$2 million</p> <p>18 pursuant to that secured promissory note dated</p> <p>19 the date here of (the note) on terms more</p> <p>20 favorable than Dittami would have obtained in an</p> <p>21 arm's length transaction."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Is it true that FXCM loaned Effex</p> <p>25 \$2 million?</p>
<p style="text-align: right;">Page 119</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. And were you aware of before this --</p> <p>3 before or around when this document was signed,</p> <p>4 were you generally aware of the agreement and</p> <p>5 what the basic terms of it?</p> <p>6 A. Excuse me.</p> <p>7 The -- again, this is part of the,</p> <p>8 you know, ongoing debate we had internally over,</p> <p>9 you know, when people like William did not, you</p> <p>10 know, still believe that we should roll back from</p> <p>11 external execution and they wanted to, you know,</p> <p>12 if Effex exceeds to buy out Effex -- Effex</p> <p>13 Capital. And we -- and he wanted to have this to</p> <p>14 help them get started to return to these options.</p> <p>15 But we, you know, we told him that it is not</p> <p>16 possible and we no longer --</p> <p>17 THE STENOGRAPHER: I'm sorry, you cut</p> <p>18 out.</p> <p>19 A. We null and voided this document and</p> <p>20 told both him and Mr. Dittami that this is not</p> <p>21 possible, you know, our legal team said this is,</p> <p>22 you know, not doable.</p> <p>23 Q. And when you say you "null and voided</p> <p>24 this document," how did you do so?</p> <p>25 A. I'm not the details guy. I just yell</p>	<p style="text-align: right;">Page 121</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. No. So FXCM -- I mean, technically</p> <p>3 semi-true but not really. FXCM, essentially,</p> <p>4 collateralized the prime brokerage account to</p> <p>5 enable Mr. Dittami to get prime brokerage access</p> <p>6 to the FX market, which he would not have</p> <p>7 otherwise been able to do as an independent</p> <p>8 institution. That is a service FXCM did for</p> <p>9 others as well.</p> <p>10 You know, this was something that we</p> <p>11 -- I mean, he paid it after a few months and he</p> <p>12 got his own relationships. But this is in the</p> <p>13 beginning he had to, you know, to get going, we</p> <p>14 had to help him get going, which we did for a</p> <p>15 number of people in similar situations in the</p> <p>16 high frequency trading space like, for example,</p> <p>17 Lucid Markets, which we did end up buying, you</p> <p>18 know, for -- you know, we bought 50 percent,</p> <p>19 which I believe was 180 or \$150 million in 2013.</p> <p>20 But in 2009, 2010, we did help him</p> <p>21 get going with the exact same arrangement, this</p> <p>22 prime brokerage arrangement.</p> <p>23 Q. Okay. And is it fair to say that you</p> <p>24 know if this wasn't a loan, this was FXCM</p> <p>25 allowing Effex to use \$2 million as collateral</p>

<p style="text-align: right;">Page 122</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 which Effex then paid back you said after a few</p> <p>3 months?</p> <p>4 A. Correct.</p> <p>5 Q. Did Effex pay any interest on this</p> <p>6 amount of money?</p> <p>7 A. I don't know the specifics.</p> <p>8 Q. Would you agree that the terms of</p> <p>9 that say financial transaction were more</p> <p>10 favorable than for Mr. Dittami than he would have</p> <p>11 been able to obtain in an arm's length</p> <p>12 transaction?</p> <p>13 MR. DAHAN: Objection to form.</p> <p>14 A. It depends on -- I mean, it really</p> <p>15 depends on how much somebody else believed that</p> <p>16 they wanted his business. I mean, it's clearly</p> <p>17 we would have done that -- high frequency trading</p> <p>18 space in those times was a very attractive, you</p> <p>19 know, business. And Lucid, you know, and other</p> <p>20 firms, you know, were making a lot of money by --</p> <p>21 arbitrage was in between financial institution --</p> <p>22 exchanges was very easy -- easier at the time.</p> <p>23 It was not as competitive a business. This was</p> <p>24 the business that everybody was trying to get</p> <p>25 into and, you know, we as well. So we, clearly,</p>	<p style="text-align: right;">Page 124</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 you know, people in that department work with</p> <p>3 him, you know, to help him interface better with</p> <p>4 the FXCM system. Again, we used to do that for a</p> <p>5 whole bunch of people each in a different</p> <p>6 circumstance.</p> <p>7 But, you know, generally, the</p> <p>8 incubating -- incubation services that, you know,</p> <p>9 multiple prime of primes offer, you know, that's</p> <p>10 not an abnormal relationship. You know, I think</p> <p>11 that -- it was limited to this.</p> <p>12 Q. Okay. I'm going to show you the next</p> <p>13 document.</p> <p>14 (Deposition Exhibit 38, 4/14/10</p> <p>15 e-mail from John Dittami to David Sassoon</p> <p>16 GLBR_00189079 marked Confidential, was marked for</p> <p>17 identification.)</p> <p>18 Q. This is Exhibit 38 and please let me</p> <p>19 know when you can see it.</p> <p>20 A. I can see it.</p> <p>21 Q. Okay. And I'll note that you do not</p> <p>22 appear on this e-mail, but please take a minute</p> <p>23 to review. I'm just going to ask you some --</p> <p>24 well, I'll ask you a few questions.</p> <p>25 MR. BAKER: For the record,</p>
<p style="text-align: right;">Page 123</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 did this for, you know, a number of people, you</p> <p>3 know, not just him, you know, in that space.</p> <p>4 And would other people have done it</p> <p>5 for him? Possibly, possibly not. It would</p> <p>6 demand a relationship and time spent. And, you</p> <p>7 know, at that moment in time he probably couldn't</p> <p>8 get a better deal, but I don't know if that would</p> <p>9 be the case or not. I, certainly, know people</p> <p>10 who got similar deals.</p> <p>11 But, I think, you know, at the end of</p> <p>12 the day it doesn't matter because we did not --</p> <p>13 we helped him get started, but we did not, you</p> <p>14 know, exercise this option or do anything, you</p> <p>15 know. We null and voided this agreement.</p> <p>16 Q. When you say, "we helped him get</p> <p>17 started," were there other ways in which FXCM</p> <p>18 helped Effex get started?</p> <p>19 A. Yes.</p> <p>20 Q. Such as what?</p> <p>21 A. We temporarily gave him office space.</p> <p>22 We have a department in FXCM called Programming</p> <p>23 Services where we do custom work for our clients</p> <p>24 to enable them to better connect and interface</p> <p>25 their software to our software. And so we had,</p>	<p style="text-align: right;">Page 125</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Exhibit 38 is GLBR 189079.</p> <p>3 Q. Mr. Niv, just let me know when you're</p> <p>4 ready.</p> <p>5 A. I'm ready.</p> <p>6 Q. Okay. And, as I mentioned, this is</p> <p>7 an e-mail that you do not appear to be on, but</p> <p>8 have you seen this document before?</p> <p>9 A. I don't recall.</p> <p>10 Q. Okay. But do you see that -- would</p> <p>11 you agree this appears to be an e-mail from Mr.</p> <p>12 Dittami to David Sassoon, Mr. Ahdout and</p> <p>13 Mr. Grossman?</p> <p>14 A. Yes.</p> <p>15 Q. And Mr. Dittami writes, "Just to</p> <p>16 confirm steps for meeting."</p> <p>17 Based on the context of this e-mail</p> <p>18 and the date, do you remember if you attended</p> <p>19 that meeting?</p> <p>20 A. I have no idea. No, I don't recall.</p> <p>21 Q. Do you remember if you would have</p> <p>22 been, at least, aware of this meeting?</p> <p>23 A. I don't recall. You know, again, big</p> <p>24 company, lots going on.</p> <p>25 Q. Is this something that -- is this</p>

<p style="text-align: right;">Page 138</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Okay. And in those discussions,</p> <p>3 generally, do you remember discussing other</p> <p>4 structural alternatives besides pay for flow?</p> <p>5 A. So, obviously, again, the original</p> <p>6 concept was we were going to have 70/30 profit</p> <p>7 share, you know. But, again, as I explained</p> <p>8 previously, that is just not practical given the</p> <p>9 reality of once he has his own firm and he's</p> <p>10 taking other clients and that flow from Client A</p> <p>11 is intermixed with flow from Client B, that's</p> <p>12 just not possible -- excuse me -- to</p> <p>13 differentiate between profits from Client A to</p> <p>14 Client B.</p> <p>15 And, you know, it is also, you know,</p> <p>16 like I said, just something that, you know, just</p> <p>17 -- and not practical really and not standard in</p> <p>18 the industry. So that's why we -- initially, we</p> <p>19 went through a this should be a profit share to</p> <p>20 look like the employment agreement, because</p> <p>21 that's a deal we already negotiated and worked</p> <p>22 out, to that it's just not practical under him</p> <p>23 having his own firm and, therefore, he has to</p> <p>24 change into what we changed it to.</p> <p>25 Q. Okay. And I think I understand what</p>	<p style="text-align: right;">Page 140</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 FXCM for order flow?</p> <p>3 A. How we set the rate I don't recall</p> <p>4 exactly. But, you know, the problem with setting</p> <p>5 rates is that every currency has a different</p> <p>6 spread and, therefore, the market making profits</p> <p>7 on every currency is different. The -- how much</p> <p>8 volume is done in each currency changes from day</p> <p>9 to day depending on the interest of clients in</p> <p>10 that currency. We don't control that. The</p> <p>11 spreads change. Market conditions change. So,</p> <p>12 you know, in volatile times market makers make</p> <p>13 more money than in dead times. So there's lots</p> <p>14 of different reasons when, you know -- you know a</p> <p>15 number would be a high percentage or a low</p> <p>16 percentage of profit depending on whose currency</p> <p>17 was traded, which, you know, which -- what time</p> <p>18 day it was, what market conditions were. All</p> <p>19 things are just completely un-forecastable. So</p> <p>20 they're just not practical to really benchmark it</p> <p>21 around a certain number because you have to take</p> <p>22 into account lots of different things.</p> <p>23 Q. The \$21 per million rate for order</p> <p>24 flow, that was applied to all -- was that applied</p> <p>25 to all of the FXCM order flow that Effex</p>
<p style="text-align: right;">Page 139</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 you're saying there.</p> <p>3 I guess what I'm getting at, were</p> <p>4 there other structural alternative other than</p> <p>5 those, you know, that you're -- what you</p> <p>6 described as the profit share or pay for flow,</p> <p>7 was there other ways of structuring this</p> <p>8 arrangement that were discussed at that time?</p> <p>9 A. I'm sure there -- I have no</p> <p>10 recollection of specific structures. But, I</p> <p>11 mean, these were long discussions over long</p> <p>12 periods of time that, you know, took research</p> <p>13 and, you know, lots of different, you know,</p> <p>14 opinions and there -- like I said, there were</p> <p>15 still arguments going on about what's our</p> <p>16 ultimate, you know, business goal here, you know,</p> <p>17 because the -- this is too early. This is still</p> <p>18 2010. So the jury is still out on, you know,</p> <p>19 whether external execution is going to work as a</p> <p>20 business model long-term or not.</p> <p>21 Q. Okay. And when you were having these</p> <p>22 discussions and figuring out how to structure the</p> <p>23 Effex/FXCM relationship as pay for flow, did the</p> <p>24 70/30 -- original 70/30 split come into play in</p> <p>25 terms of setting the rate that Effex would pay</p>	<p style="text-align: right;">Page 141</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 captured?</p> <p>3 MR. DAHAN: When, Counsel? I mean,</p> <p>4 we know that there's -- I mean, no mystery here.</p> <p>5 We know there were different agreements,</p> <p>6 amendments. So when? I mean, let's --</p> <p>7 MR. BAKER: Yeah, I'm trying to think</p> <p>8 how to clarify.</p> <p>9 MR. DAHAN: Pick a time. Pick a time</p> <p>10 period, that's all. We, obviously, know that's</p> <p>11 not the case. (INAUDIBLE) So pick a time.</p> <p>12 Q. Mr. Niv, when these services</p> <p>13 agreement were first signed, was it your</p> <p>14 understanding that the \$21 per million that Effex</p> <p>15 would pay was based on all of the order flow that</p> <p>16 Effex captured from FXCM?</p> <p>17 A. Yes.</p> <p>18 Q. And was there a time when that</p> <p>19 changed?</p> <p>20 A. Yes.</p> <p>21 Q. When was that?</p> <p>22 A. So, as time went on and this became a</p> <p>23 big success and, you know, spreads, you know,</p> <p>24 basically, narrowed by about 80 to 90 percent</p> <p>25 over the next few years, particularly, spreads in</p>

<p style="text-align: right;">Page 142</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 euro/dollar and dollar/yen, you know, obviously,</p> <p>3 it became -- you know, over time we had to make a</p> <p>4 few changes and it became unattainable for them</p> <p>5 to pay us more than a tiny fee because they just</p> <p>6 weren't making, you know, that type of money.</p> <p>7 So, obviously, all market makers, as you noted</p> <p>8 previously, make less money on narrower spread</p> <p>9 currencies. And as the spreads were narrowing,</p> <p>10 you know, in like I said by significant amounts,</p> <p>11 you -- they could not afford to pay us the</p> <p>12 amounts that we initially signed for.</p> <p>13 Q. Okay. And, I think, now maybe I</p> <p>14 understand where the source of the confusion with</p> <p>15 my original question.</p> <p>16 So regardless of what the fee -- the</p> <p>17 specific fee per million was at anytime, was it</p> <p>18 your understanding that throughout the time that</p> <p>19 Effex was paying FXCM for order flow that it was</p> <p>20 paying for all order flow that Effex captured</p> <p>21 from FXCM as opposed to segments of that order</p> <p>22 flow?</p> <p>23 A. I do not recall a hundred percent</p> <p>24 everything because there were -- there may have</p> <p>25 been some stuff that's not there that's excluded.</p>	<p style="text-align: right;">Page 144</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Yes, I see it.</p> <p>3 Q. Okay. And please take a minute to</p> <p>4 review. I am just going to be asking you some</p> <p>5 general questions here.</p> <p>6 MR. BAKER: For the record,</p> <p>7 Exhibit 41 is GLBR 194774, and an attachment</p> <p>8 which is GLBR 194776.</p> <p>9 Q. Mr. Niv, I'll note that you do not</p> <p>10 appear to be on the e-mails. So I'm just going</p> <p>11 to ask you some general questions here.</p> <p>12 But does this appear to be an e-mail</p> <p>13 from Robert Lande to Joshua Rosenfeld and Joe</p> <p>14 Filko with an attachment?</p> <p>15 A. Yeah.</p> <p>16 Q. And in the bottom e-mail on this</p> <p>17 chain, which is from Alexander Dick to John</p> <p>18 Dittami copying Mr. Grossman, Mr. Ahdout and</p> <p>19 Mr. Sassoon, Mr. Dick writes, "Here is the</p> <p>20 updated version of the Services Agreement."</p> <p>21 And he says, "The PDF version is for</p> <p>22 you to sign."</p> <p>23 Do you see that?</p> <p>24 A. Yeah.</p> <p>25 Q. And then further up in the chain, Mr.</p>
<p style="text-align: right;">Page 143</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 But I don't recall. But I do recall that we did</p> <p>3 change -- when spreads on Euro/dollar and</p> <p>4 dollar/yen became, you know, extremely narrow and</p> <p>5 we could no longer afford it, we did delineate</p> <p>6 between those two currencies and the rest of the</p> <p>7 currencies.</p> <p>8 Q. Okay. And we're going to get into</p> <p>9 that a little bit later today.</p> <p>10 Were you aware of any written</p> <p>11 agreement, which includes a services agreement --</p> <p>12 and if you need to flip back you can -- which set</p> <p>13 out specifically how -- from what liquidity</p> <p>14 streams or which liquidity streams Effex would</p> <p>15 pay FXCM order flow on?</p> <p>16 A. I would not be involved in those</p> <p>17 discussions.</p> <p>18 Q. Okay. I'm going to show you the next</p> <p>19 document.</p> <p>20 (Deposition Exhibit 41, e-mail string</p> <p>21 and attachment GLBR_00194774 to GLBR_00194783</p> <p>22 marked Confidential, was marked for</p> <p>23 identification.)</p> <p>24 Q. Okay. Exhibit 41 should be up now.</p> <p>25 Mr. Niv, please let me know if you can see it.</p>	<p style="text-align: right;">Page 145</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Lande is forwarding an attachment titled, "Effex</p> <p>3 Services AGMT 17 AUG 10 (execution copy)."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And he writes, "This is what we are</p> <p>7 planning to executing with Dittami."</p> <p>8 Were you aware of a new services</p> <p>9 agreement in August 2010 separate from the two</p> <p>10 agreements that we looked at earlier today?</p> <p>11 MR. DAHAN: Objection to form.</p> <p>12 A. Again, I don't know -- I'm not aware</p> <p>13 -- I'm aware of the substance of the agreement.</p> <p>14 I am not aware of drafts and, you know, these</p> <p>15 other entity switches and all the other details.</p> <p>16 Q. In general, would you have expected</p> <p>17 to be informed if Effex and FXCM were changing</p> <p>18 their written agreements or entering in new ones?</p> <p>19 MR. DAHAN: Objection to the extent</p> <p>20 that they're changing or entering into new ones,</p> <p>21 lack of foundation.</p> <p>22 Q. You can answer.</p> <p>23 A. We can -- again, if in the substance</p> <p>24 the payment terms are changing or the, you know,</p> <p>25 conditions under which, you know, all this is</p>

<p style="text-align: right;">Page 150</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 get the 'service agreement' put in place."</p> <p>3 Do you recall that meeting?</p> <p>4 A. I don't recall that meeting, sorry.</p> <p>5 Q. Do you remember discussing services</p> <p>6 agreement or an amendment with Mr. Grossman,</p> <p>7 Mr. Ahdout, Mr. Dittami, Mr. Meyer in or around</p> <p>8 October 2011?</p> <p>9 A. I don't. This is, again, ten years</p> <p>10 ago. I don't recall what happened then.</p> <p>11 Q. In the top e-mail?</p> <p>12 A. I know the substance of moving -- the</p> <p>13 dollars per million came up a whole bunch of time</p> <p>14 and we did move it a few times during the life of</p> <p>15 the agreement, I think, two times or three times.</p> <p>16 That I remember that we had to do that because,</p> <p>17 you know, again, spreads were shrinking, markets</p> <p>18 were less volatile, et cetera, et cetera, like he</p> <p>19 wasn't making a trade like he thought he would</p> <p>20 make it.</p> <p>21 Q. Okay. And looking at the top e-mail,</p> <p>22 does this appear to be a discussion about one of</p> <p>23 those instances you described where Effex and</p> <p>24 FXCM changed the rate that Effex would pay for</p> <p>25 order flow?</p>	<p style="text-align: right;">Page 152</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 you know, basically, depended on how much volume</p> <p>3 of trades. So the more -- the tighter the</p> <p>4 spreads, generally speaking, the more volume you</p> <p>5 get. Therefore, we were always better off that</p> <p>6 way. So we were happy to do it because it was</p> <p>7 happening for the right reasons.</p> <p>8 Q. Okay. And you mentioned a little bit</p> <p>9 earlier that the conversation about moving the</p> <p>10 dollars per million came up a bunch of times and</p> <p>11 I think you said you remember doing it two or</p> <p>12 three times during the life of the agreement; is</p> <p>13 that an accurate recollection of your testimony?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall about how many times or</p> <p>16 how often those conversations would come up about</p> <p>17 changing the fee per million between Effex and</p> <p>18 FXCM?</p> <p>19 A. I don't recall, you know.</p> <p>20 Q. Was it multiple times a year, once</p> <p>21 every couple of years?</p> <p>22 A. I mean, John would keep us abreast,</p> <p>23 you know, that, you know, intermittently how much</p> <p>24 money he was make and how well the market was and</p> <p>25 what the situations are. But we also would see</p>
<p style="text-align: right;">Page 151</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 A. Correct.</p> <p>3 Q. And this is from \$21 per million to</p> <p>4 \$16 per million?</p> <p>5 A. Correct.</p> <p>6 Q. Do you recall who wanted to change</p> <p>7 the fee at this time?</p> <p>8 A. John.</p> <p>9 Q. And do you recall -- did he tell you</p> <p>10 why?</p> <p>11 MR. DAHAN: Objection, asked and</p> <p>12 answered, 15 times today. I mean, do it again.</p> <p>13 A. You know, again, over time spreads</p> <p>14 contracted, right, and which is exactly what we</p> <p>15 wanted to happen happened. You know, we wanted</p> <p>16 spreads to go down. We wanted, right,</p> <p>17 essentially, clients to have cheaper American</p> <p>18 competitive price and that was happening. But as</p> <p>19 that happens, that squeezes the, you know, the</p> <p>20 market makers or the suppliers. They make less</p> <p>21 money per trade and, therefore, they can pay less</p> <p>22 money per trade. So that is the whole point</p> <p>23 because we would get more trades and the bulk of</p> <p>24 the money that FXCM made, you know, which is 97</p> <p>25 or 96 percent, right, was from the markups which,</p>	<p style="text-align: right;">Page 153</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 it ourselves in terms of talking to other market</p> <p>3 makers and then, you know, getting their lay of</p> <p>4 the land and what they were seeing, you know, and</p> <p>5 if things were getting better or worse for them.</p> <p>6 And, obviously, again, mix of currencies change,</p> <p>7 mix of, you know, different things in the market,</p> <p>8 different issues and so those -- we would talk</p> <p>9 about the market quite frequently. So I'm sure</p> <p>10 the subject of, you know, how is that impacting</p> <p>11 his business comes up. How many times did he</p> <p>12 want to change the fee, I don't remember.</p> <p>13 Q. So -- and when you say that Effex and</p> <p>14 FXCM did change the fee two or three times during</p> <p>15 the life of the agreement, do you recall if the</p> <p>16 Services Agreement was amended for there was a</p> <p>17 new services agreement put in place each of those</p> <p>18 times?</p> <p>19 A. I wouldn't know those details.</p> <p>20 Q. Would you expect that to be true?</p> <p>21 MR. DAHAN: Objection to form.</p> <p>22 A. I -- again, you know, this is -- I</p> <p>23 only deal with the big substantive issues, you</p> <p>24 know. I would not have time to worry about or</p> <p>25 know what documents people were using and, you</p>

<p style="text-align: right;">Page 154</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 know, like, again, we had lawyers in our</p> <p>3 employment. That's what their job was. That</p> <p>4 wasn't mine.</p> <p>5 Q. And so the times that the rate that</p> <p>6 Effex paid to FXCM did change, were you involved</p> <p>7 in or aware of those discussions each time?</p> <p>8 A. I would approve the change of rate,</p> <p>9 yes. Again, big substantive issues like change</p> <p>10 of rate I would approve.</p> <p>11 Q. Okay.</p> <p>12 A. That would probably be the only</p> <p>13 thing. The only other issue would be the</p> <p>14 benchmark conditions, right, under which this</p> <p>15 thing agreed -- rests. So, you know, kind of we</p> <p>16 obsessed over the -- we got frequent reports</p> <p>17 about what the rejection rates are for all the</p> <p>18 liquidity providers and we provided that to all</p> <p>19 of them and so they can compare to one another.</p> <p>20 We would -- you know, all of the, again, sort of</p> <p>21 speed of reply, hold time speeds, the -- for each</p> <p>22 maker, you know, performance, how much price</p> <p>23 improvements we would receive, you know, not us,</p> <p>24 clients would receive because of their</p> <p>25 interaction, all of those metrics that are used</p>	<p style="text-align: right;">Page 156</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 know, preference.</p> <p>3 Q. So, in the time that Effex was paying</p> <p>4 FXCM for order flow, was it generally true that</p> <p>5 Effex had the best executions you referred to</p> <p>6 with rejection rates and the other metrics that</p> <p>7 we discussed today?</p> <p>8 A. Yes, by far.</p> <p>9 Q. And because of that, FXCM gave them</p> <p>10 certain advantages like winning ties or lower</p> <p>11 markups; is that accurate?</p> <p>12 A. Correct. And we kept that -- in</p> <p>13 August 2014, we ended payment for order flow and</p> <p>14 for the next few years we still gave them the</p> <p>15 same preferences and had the same relationship,</p> <p>16 you know, minus the payment for order flow</p> <p>17 because of that -- you know, because of their,</p> <p>18 you know, ability to make our service that much</p> <p>19 more competitive.</p> <p>20 Q. So, if they had the best execution,</p> <p>21 why did they have to pay you for order flow?</p> <p>22 A. Because it's standard practice.</p> <p>23 That's what, you know, it's very common. That's</p> <p>24 what everybody does in the market, not just</p> <p>25 Effex, in equities too.</p>
<p style="text-align: right;">Page 155</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 to, you know, average spread paid, slippage, all</p> <p>3 of those things. So we had those discussions</p> <p>4 with people, right, and that was a frequent --</p> <p>5 because those were the metrics under which we</p> <p>6 were judged by our clients.</p> <p>7 Q. Okay. And, just to make sure I</p> <p>8 understand, were those sort of metrics for</p> <p>9 rejection rates that you were talking about, was</p> <p>10 that tied to the rate per million that Effex</p> <p>11 would pay to FXCM?</p> <p>12 A. Those, basically, underpinned the</p> <p>13 agreement. So he would have to be the best and</p> <p>14 the best by far for him to enjoy the preferential</p> <p>15 status that he received in terms of winning ties.</p> <p>16 Q. Was that -- the preferential status</p> <p>17 that he received, was that part of this services</p> <p>18 agreement?</p> <p>19 A. I don't recall specifics, but that</p> <p>20 was the -- you know, that's how we determined it.</p> <p>21 Q. And so, with him to use your words</p> <p>22 being the best in terms of execution, was that</p> <p>23 connected to the rate of -- that Effex would pay</p> <p>24 FXCM for order flow?</p> <p>25 A. No. It would just affect their, you</p>	<p style="text-align: right;">Page 157</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Were there other liquidity providers</p> <p>3 who had worse execution than Effex paying FXCM</p> <p>4 for order flow?</p> <p>5 A. We had some agreements with some</p> <p>6 other people for limited periods of time. But</p> <p>7 they, you know, we just had this -- could never</p> <p>8 come to terms with them on -- they could -- it's</p> <p>9 not come to terms. They could never execute what</p> <p>10 they promised. So, as you saw in previous</p> <p>11 e-mails that you showed me, we had different</p> <p>12 arrangements with Dresdner, with Citibank, with</p> <p>13 BNP, with Goldman, we had lots of others over,</p> <p>14 you know, trying to give them either preferential</p> <p>15 markup or payment for order flow with winning</p> <p>16 ties and to see if this would improve. You know,</p> <p>17 they would therefore step up and do much lower</p> <p>18 rejection rate and much faster response time and</p> <p>19 basically eliminate -- if we go back to one of</p> <p>20 the first e-mails you showed me the two big</p> <p>21 problems we had, which was spreads widening</p> <p>22 during market movements in Asian markets and the</p> <p>23 slippage that our clients were receiving. So</p> <p>24 they would have to show us larger sizes. You</p> <p>25 know, most banks just failed at doing that and</p>

<p style="text-align: right;">Page 162</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. But only with respect to Effex and</p> <p>3 possibly BNP at this time; is that correct, with</p> <p>4 respect to the payment order flows?</p> <p>5 A. At this time, yes, because the other</p> <p>6 discussions failed, you know. And these are</p> <p>7 large institutions, they're not going to enter</p> <p>8 this agreement without getting preferential</p> <p>9 treatment and doing a substantial amount of more</p> <p>10 business because this would then not be</p> <p>11 sufficiently big enough for them to get into this</p> <p>12 agreement.</p> <p>13 You know, when Charles Schwab and</p> <p>14 Ameritrade and Robin Hood are giving payment for</p> <p>15 order flow, they're doing it to only a few</p> <p>16 counterparties and, you know, who are each</p> <p>17 getting a substantial piece of the share. That's</p> <p>18 why there is that. When they route it to other</p> <p>19 venues, they don't receive payment for order</p> <p>20 flow.</p> <p>21 Q. Okay. I think we can move on.</p> <p>22 I'm going to introduce the next</p> <p>23 exhibit.</p> <p>24 (Deposition Exhibit 43, Amendment to</p> <p>25 Service Agreement E Capital-000060, was marked</p>	<p style="text-align: right;">Page 164</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 one taking care of, you know, and so would not be</p> <p>3 doing that.</p> <p>4 Q. Okay. I'm going to show you another</p> <p>5 document.</p> <p>6 (Deposition Exhibit 44, 8/25/14</p> <p>7 letter to John Dittami from David Sassoon</p> <p>8 GLBR_00125304 marked Confidential, was marked for</p> <p>9 identification.)</p> <p>10 Q. Okay. This is Exhibit 44. It should</p> <p>11 be up now. Please let me know if you can see it.</p> <p>12 A. I see it.</p> <p>13 Q. Okay. And take a minute to review.</p> <p>14 MR. BAKER: For the record,</p> <p>15 Exhibit 44 is GLBR 125304.</p> <p>16 Q. And, Mr. Niv, my first question will</p> <p>17 be, do you recognize this document?</p> <p>18 A. Yeah, I know the -- I don't see the</p> <p>19 -- I, generally, don't recall seeing these</p> <p>20 documents, but I know the substance of what's in</p> <p>21 it and why we did that.</p> <p>22 Q. And were you aware of these documents</p> <p>23 or the substance at the time that they were</p> <p>24 executed?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 163</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 for identification.)</p> <p>3 Q. Okay. This is Exhibit 43. Please</p> <p>4 let me know when you can see it.</p> <p>5 A. I can see it.</p> <p>6 Q. Okay. And please take a minute to</p> <p>7 review.</p> <p>8 MR. BAKER: For the record,</p> <p>9 Exhibit 43 is E Capital 60. It's 6-0.</p> <p>10 Q. Mr. Niv, my first question will be,</p> <p>11 do you recognize this document?</p> <p>12 A. No. I know what it is about, but I</p> <p>13 don't see these documents.</p> <p>14 Q. Okay. And is this an executed</p> <p>15 amendment to the May 1, 2010 services agreement</p> <p>16 that we looked at earlier today?</p> <p>17 A. Yes.</p> <p>18 Q. Have you ever seen this agreement</p> <p>19 before?</p> <p>20 A. I don't recall. And I would not in</p> <p>21 normal course of business see documents like</p> <p>22 this. I would know about the change, as I said</p> <p>23 before. I would know and approve the change, the</p> <p>24 substance of it. But the papering of it and all</p> <p>25 the legal semantics behind it, I would not be the</p>	<p style="text-align: right;">Page 165</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. And is this a letter terminating the</p> <p>3 May 1, 2010 Services Agreement that we looked at</p> <p>4 earlier today?</p> <p>5 A. Yes.</p> <p>6 Q. Were you involved in the decision to</p> <p>7 terminate the Services Agreement with Effex?</p> <p>8 A. Yes.</p> <p>9 Q. What was your involvement?</p> <p>10 A. It's -- the UK regulator made a</p> <p>11 determination that they do not like payment for</p> <p>12 order flow and ordered all of the regulated firms</p> <p>13 in their -- regulated by them are not allowed to</p> <p>14 accept payment for order flow.</p> <p>15 Q. And do you know --</p> <p>16 A. And so we had an over -- we had a UK</p> <p>17 subsidiary where we made a determination that if</p> <p>18 we -- you know, if one jurisdiction forbids it,</p> <p>19 it is best practice to, essentially, forbid it in</p> <p>20 all jurisdictions and we ended it.</p> <p>21 Q. Alright. So you were part of the</p> <p>22 discussions about ending the payments for order</p> <p>23 flow?</p> <p>24 A. Right. I mean, obviously, it was by</p> <p>25 regulatory decree for the UK entity. But we made</p>

<p style="text-align: right;">Page 174</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 to, you know, terminate the payment for order</p> <p>3 flow.</p> <p>4 Q. And is this -- with this document in</p> <p>5 particular, is this a letter terminating the</p> <p>6 resignation letter that we looked at earlier</p> <p>7 today?</p> <p>8 A. Again, I have no idea, you know, like</p> <p>9 this is not -- I mean, that's -- you're showing</p> <p>10 me two documents I've never seen before. So I</p> <p>11 don't know, you know. I'm not involved in these</p> <p>12 little details.</p> <p>13 I know that we terminated payment for</p> <p>14 order flow. That is what I know.</p> <p>15 Q. Okay. Were you involved in any</p> <p>16 discussions about terminating Mr. Dittami's</p> <p>17 resignation letter?</p> <p>18 A. That makes no sense to me. I don't</p> <p>19 recall that at all.</p> <p>20 Q. Well -- sure. To clarify, there was</p> <p>21 a resignation letter from Mr. Dittami that we</p> <p>22 looked at earlier today --</p> <p>23 A. Right.</p> <p>24 Q. -- which I'll represent to us appears</p> <p>25 -- is also Exhibit B within Exhibit 45. And the</p>	<p style="text-align: right;">Page 176</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 GLBR_00189374 marked Confidential, was marked for</p> <p>3 identification.)</p> <p>4 Q. Okay. Exhibit 46 should be loaded</p> <p>5 now.</p> <p>6 Please let me know if you can see it.</p> <p>7 A. I can see it.</p> <p>8 Q. Okay. And please take a minute to</p> <p>9 review.</p> <p>10 MR. BAKER: For the record,</p> <p>11 Exhibit 46 is GLBR 189371.</p> <p>12 Q. And, Mr. Niv, take a minute to</p> <p>13 review.</p> <p>14 But my first question will be, do you</p> <p>15 recognize this document?</p> <p>16 A. I do not.</p> <p>17 Q. Does this appear to be an executed</p> <p>18 Acknowledgment and Confirmation stating that the</p> <p>19 Option Agreement we looked at earlier today never</p> <p>20 went into effect?</p> <p>21 A. Correct.</p> <p>22 Q. And have you ever seen this document</p> <p>23 before?</p> <p>24 A. I don't recall the document. I</p> <p>25 recall the discussion to not do it.</p>
<p style="text-align: right;">Page 175</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 first page of Exhibit 45 appears to be a letter</p> <p>3 terminating the termination agreement.</p> <p>4 Am I characterizing that accurately</p> <p>5 based on the document?</p> <p>6 A. I -- I've never seen it before, so I</p> <p>7 don't know. Maybe this is a mistake, because it</p> <p>8 doesn't make any sense.</p> <p>9 Q. Okay.</p> <p>10 A. I know -- again, my explanation prior</p> <p>11 stands. This is -- we -- I know we terminated</p> <p>12 the payment for order flow, you know, in 2014</p> <p>13 because of our UK edict.</p> <p>14 Do I know which document, which</p> <p>15 dates, how it was all sent? No idea.</p> <p>16 Q. And was Mr. Dittami's termination</p> <p>17 letter, which is the second page here and the one</p> <p>18 we looked at earlier today, was that connected to</p> <p>19 payments for order flow?</p> <p>20 A. No recollection of how that would be</p> <p>21 connected.</p> <p>22 Q. Okay. I'm going to show you another</p> <p>23 document.</p> <p>24 (Deposition Exhibit 46,</p> <p>25 Acknowledgement and Confirmation GLBR_00189371 to</p>	<p style="text-align: right;">Page 177</p> <p>1 CONFIDENTIAL - DROR NIV</p> <p>2 Q. Do you recall a discussion -- I'll</p> <p>3 focus you down to the second page here, which in</p> <p>4 the signature block the signatures are in</p> <p>5 November and December 2015.</p> <p>6 Do you see that?</p> <p>7 A. Yeah.</p> <p>8 Q. Do you recall discussions around that</p> <p>9 time period about executing some sort of document</p> <p>10 like this with regard to the option agreement?</p> <p>11 MR. DAHAN: Yeah, I'm just going to</p> <p>12 -- first, again, if you can answer yes or no, but</p> <p>13 only on if you remember discussions. But,</p> <p>14 obviously, to the extent there were discussions</p> <p>15 with in-house counsel or external Counsel on this</p> <p>16 document, I don't want you revealing that. So</p> <p>17 yes or no do you remember discussions, you can</p> <p>18 answer just a yes or no for now and let's see --</p> <p>19 A. I don't recall discussions.</p> <p>20 Q. Okay. Were you aware of any</p> <p>21 significant developments in the NFA or CFTC</p> <p>22 investigations between when each of those started</p> <p>23 and November 2015?</p> <p>24 MR. DAHAN: Objection to form,</p> <p>25 "significant developments"? I don't even know a</p>

45 (Pages 174 - 177)